IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No. 1897 of 2004
Date of decision: February 22,2007

Gurvinder Kaur and another V. M.S.Kohli

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri S.S.Bains, Advocate, for the appellants.
Shri Raman Mahajan, Advocate, for the respondent.

Viney Mittal,J.

A suit for recovery filed by the plaintiff-respondent has been decreed by the trial court for an amount of Rs.50,000/-. The appeal filed by the defendants has been dismissed by the first appellate court. The defendants are in second appeal.

Plaintiff, M.S.Kohli, filed a suit for recovery of Rs.88,322/- along with interest. The aforesaid amount was claimed by the plaintiff, on the allegations that the defendants had been carrying on a business of fruit based drinks and had appointed the plaintiff as inhouse distributor on March 12,1990 for the supply of aforesaid fruit based drinks. The plaintiff was required to deposit certain amounts with the defendants for starting the business of distributorship. The plaintiff claimed that he had deposited an amount of Rs.25,000/- as security deposit; an amount of Rs.25,000/- as security for empty crates; an amount of Rs. 20,032 for the supply of fruit based load and another amount of Rs.27,000/- for fruit based load. Thus, the plaintiff pleaded that he had deposited an amount of Rs.99,032/- with the defendants. According to the plaintiff, the defendants had supplied 300 crates load of fruit based drink to the plaintiff on April 24,1990 worth Rs.15,300/- but 90 crates

out of the supplied crates were not consumable and,therefore, deducting the price of those 90 crates to the extent of Rs.4590/-, a genuine supply of crates worth Rs.10,710/- was only made to the plaintiff. The plaintiff claimed that he was entitled to recovery of Rs.88,322/- after adjusting the amount of Rs.10,710/-.

The suit was contested by the defendants. They admitted that they appointed the plaintiff as inhouse distributor for their product. They also admitted that they had received an amount of Rs.50,000/- through cheques, out of which Rs.25,000/- was received as non-refundable security for appointment of the plaintiff as a distributor and the remaining amount of Rs.25,000/- was for supply of 864 empty crates. The defendants also maintained that an amount of Rs.22,032/- was received by them for liquid supply of 432 crates but instead supply of 300 crates was received from the Company which was delivered to the plaintiff. According to the defendants, an amount of Rs.27000/- was paid to the defendants towards a part payment of the material of Rs.41,863/- received by the defendants from M/s. Bhawan Enterprices which was also received in turn by the plaintiff as he had also been appointed distributor for supply of James, Tomato Ketchup, Syrup. , Cheese Balls etc. The defendants denied that 90 out of 300 crates were defective. On the other hand, the defendants claimed that Rs.1,26,685/- was still payable by the plaintiff to the defendants. The defendants lodged a counter claim qua the aforesaid amount.

The learned trial court rejected the counter claim filed by the defendants and decreed the suit filed by the plaintiff for an amount of Rs.50,000/- along with interest. However, the trial court held that if the plaintiff fails to return the empty crates lying with him, then the plaintiff would only be entitled to recover the amount of

Rs.25,000/- lying as security with the defendants.

The defendant filed an appeal before the first appellate court. The plaintiff also filed cross-objections. The entire evidence on the record was re-examined by the first appellate court.

The first appellate court also held, as held by the trial court, that the security amount deposited by the plaintiff with the defendants could not be treated to be non-refundable. It was held by the first appellate court that the plaintiff had received 864 crates from the defendants and as such the defendants were entitled to deduct an amount of Rs. 47,520/- from the amount due from them to the plaintiff. However, the appellate court also rejected the counter claim filed by the defendants and held that after deducting the amount of Rs.47,520/-, the plaintiff would be entitled to an amount of Rs.50,000/-, including the amount of Rs.25,000/- which the plaintiff would be entitled to recover only after he returned the empty crates. Thus, all the findings recorded by the trial court were affirmed by the first appellate court and consequently the appeal filed by the defendants and the cross-objections filed by the plaintiff were rejected.

Nothing has been shown that the findings recorded by the two Courts below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

February 22,2007 (Viney Mittal)
sks Judge